

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

DATA RESEARCH CORP., (D.R.C.) - Civ. No. 02-1253 (JAG) c/w
Plaintiffs - 02-1625 (JAG)
vs. -
SILA CALDERON, et als. -
Defendants -
- - - - -

Deposition of: (Continuation)

CESAR REY-HERNANDEZ

Taken on the 7th Day of October 2003, at the offices of the
Department of Education, 12th Floor, Hato Rey, Puerto Rico.
By Mr. Camilo Salas.



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APPEARANCES:

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3 Notary Public: **JUDITH TORRES DE JESUS, ESQ.**

4 Court Interpreter: **MS. LAUREN GARCIA**

5 MR. CAMILO SALAS: Good afternoon, Secretary Rey.
6 You are still under oath and we are going to continue your
7 deposition today.

8 DEPONENT: Good afternoon and welcome, Counsel.

9 Whereupon,

10 **CESAR REY-HERNANDEZ**

11 After having been duly sworn in on a previously occasion,
12 testified as follows:

13 **DIRECT EXAMINATION**

14 BY MR. CAMILO SALAS:

15 Q Dr. Rey, we spoke yesterday in much detail about
16 two orders issued by Governor Calderon prior to January 24th,
17 2002. I was wondering if you had a chance to look in your
18 files to try and locate those two orders?

19 A I have been out of the office since last night
20 until a little while ago on some official business, but I did
21 ask my secretary to look and see if there were those
22 Executive orders, and to get me a copy of them as soon as
23 possible, if they exist.

1 Q How long do think that----?

2 A I trust that by tomorrow morning that will be
3 solved. Obviously, if they exist.

4 Q Yesterday we talked about your decision to
5 terminate the contracts with DRC, and you indicated that
6 among other things that you relied on Mr. Adonay Ramirez's
7 evaluation, dated September 18th, 2001. Do you remember that?

8 A That is correct.

9 Q And I have in front of me Mr. Ramirez's evaluation.
10 Let me call your attention to page 42, and particularly
11 Section III.5, do you see that Section?

12 A Yeah.

13 Q Why don't you take your time and read it? Before
14 you issued the order to cancel the DRC contracts, did you
15 have a chance to read that Section that you have just read?

16 A I discussed the Report in general terms with the
17 Advisory Group.

18 Q Just to be sure, this Section that you have
19 just read, states that Clause 12 of the DRC Contract states
20 that the Contract can be canceled by mutual consent by giving
21 notice stating the reasons for the cancellation, true?

22 A Yes, it states that.

23 Q And in fact, in the letter that DRC sent to you,

1 February 4th, and we discussed this yesterday, one of the
2 complaints by DRC was that they had not been told the reasons
3 for the cancellation, true?

4 A Yes, as I recall that's what the letter states.

5 Q So, DRC's complaint was consistent with the
6 position taken by Mr. Adonay Ramirez in the Report that you
7 just read concerning Clause 12 and the need to give notice
8 and the reasons or listed the deficiencies for the
9 cancellation.

10 MR. A.J. BENNAZAR: Pardon.

11 MR. CAMILO SALAS: Let me restate that.

12 MR. A.J. BENNAZAR: Restate that because I don't
13 think you're.... You are mixing apples and oranges.

14 BY MR. CAMILO SALAS:

15 Q The letter from DRC is consistent with the
16 statement that you have just read, that Clause 12 requires
17 reasons for the cancellation?

18 A I really don't recall Clause 12, what it
19 establishes, Counsel. Repeat the question, please.

20 Q What I Had asked you was whether or not DRC's
21 complaint in February 4th, 2002 letter about the requirement
22 under Clause 12, that the reason for cancellation given is
23 consistent with what Mr. Adonay Ramirez says on page 22,

1 paragraph number III.5---

2 MR. A.J. BENNAZAR: Then, perhaps you should show
3 him the letter from Mr. Santos Diaz, addressing him to
4 compare consistency, the letter from Santos Diaz with the
5 Adonay Report.

6 MR. CAMILO SALAS: We already went through that a
7 few minutes ago. You need to look at it.

8 BY MR. CAMILO SALAS:

9 A (DEPONENT) It is extremely clear for me, Counsel.
10 Here we have an evaluation of a project that is evidenced, as
11 I said yesterday of the dissatisfaction and non compliance on
12 the part of the client.

13 He makes some observations on the Contract, he is
14 not an attorney, he is a technician and advisor on technical
15 matters, and that was conceptualized by a group of advisors
16 that we had at the time. And a decision is taken based on
17 that.

18 Q So, what is your answer to my question, yes or no?

19 A No, it's not a "yes" or "no", it's what I said.

20 Q Mr. Adonay Ramirez says that page 22 of his Report,
21 Subsection III.5, and he says "El Contrato no incluye
22 cláusulas que le permitan al Departamento de Educación tomar
23 acciones contra DRC por una pobre ejecución de sus

1 servicios".

2 A He is not an attorney. His answer is
3 conceptualized under a technical analysis which is what I was
4 interested in. On the legal aspect, we have lawyers, there
5 was a group of lawyers and they give their advice in order
6 for the position and the legal aspect. The validity of
7 Adonay's recommendation of September is the vulnerability of
8 the service, and that is the power, the strength of his
9 recommendations.

10 Q So, did you discuss with anybody Mr. Adonay
11 Ramirez's statement in his Report that I just read?

12 Now, Mr. Adonay Ramirez's statement also says "La
13 Cláusula 12, solo establece que el Contrato puede ser
14 cancelado por mutuo consentimiento de las partes a través de
15 una notificación por escrito en la que se indiquen las
16 razones para la cancelación".

17 Now, let me ask you this, in the letter that you
18 wrote to DRC canceling the contracts, either of the two, you
19 did not give reasons for the cancellation, did you?

20 MR. A.J. BENNAZAR: Are you showing the second
21 answer? I believe it's February 4 or something like that.

22 MR. CAMILO SALAS: February 15th.

23 MR. A.J. BENNAZAR: This is it.

1 BY MR. CAMILO SALAS:

2 A (DEPONENT) On the letter of February 15th, 2002,
3 our reason in agreement with, after the reading of Clause 12,
4 it obviously serves as a legal step towards the decision we
5 are taking.

6 Q And the reasons that you gave in that letter
7 invoking Clause 12, was what?

8 A The one on February 15th?

9 Q Right.

10 A The dissatisfaction of one of the parties for which
11 it ends the Contract.

12 Q That's what you mean when you put in there "razones
13 de sana administración pública". That's what you meant by
14 that?

15 A That is correct.

16 Q Then Mr. Ramirez states, again on page 22 of his
17 Report: "No obstante, no influye ningún tipo de penalidad
18 para un mal servicio." "Todo lo contrario, el contrato le
19 concede 30 días adicionales a la Compañía para corregir las
20 desviaciones, en el caso de que se mantenga la decisión de
21 cancelar hay que pagar a DRC por los servicios realizados
22 hasta la fecha de terminación del Contrato."

23 Now, my question to you is, did you give DRC thirty

1 days to correct any problems before you canceled?

2 A I don't recall the specificity of the end of that
3 contract.

4 Q Well, you have the two letters that you wrote
5 canceling the Contract, did you give DRC thirty day notice or
6 thirty day opportunity to correct any problems that you felt
7 existed?

8 A I do not remember, Counsel. We put an end to the
9 Contract as of the date that the letter is sent.

10 Q But, the letter said "Look, you have thirty days to
11 fix the problems."

12 A January 23rd.

13 Q Or anything to that effect?

14 A No, it is not written here.

15 Q On the 23rd of January of 2002, the same day that
16 you sent the first letter of cancellation to DRC, you also
17 sent a letter to George McDonald which is... Look at page 2
18 of that letter, the first full paragraph. Let me read it for
19 the record. It says: "Furthermore, please be advised that
20 contractors who have failed to provide the services
21 adequately, have been advised that they need to provide those
22 services and repair those installations which were not
23 adequately made or else they may be facing legal actions for

1 non-compliance with contractor's terms and/or false
2 representations to USAC and the Department as to the job
3 completion for purposes connecting under the contracts".

4 Now, was DRC told that?

5 A The best of my recollection, Counsel, is that
6 before this letter of January 23rd, there is a series of
7 instances where our technicians, our advisors, and DRC, where
8 DRC is being advised of the serious deficiencies of our
9 unacceptance or non-conformity of the performance of DRC with
10 regards of the Department of Education.

11 And evidently, what this does is put an end to a
12 situation that has been corroborated by reports, and
13 evidently, due to visits and testimony of the educational
14 community. In other words, it's not that on the 23rd of
15 January, they are notified all of a sudden, it's not like all
16 of a sudden here the Contract is terminating. There were
17 some warnings, there were communications, and there were some
18 specifications of incomformity. And based on that, a
19 decision is taken.

20 Q Who told DRC or any of the employees of DRC "You
21 have thirty days to fix the problems or else we are going to
22 1: Cancel the Contract or 2: start legal action for non
23 compliance, or take any other action against DRC", who told

1 DRC?

2 A I don't know.

3 Q Well, you are telling me since now that DRC was
4 warned---

5 A You are mixing two things, Counsel. One thing is
6 that when we started working with the Department, we checked
7 all the other contracts and all the suppliers. And
8 similarly, we inspected, we monitored, we warned and we
9 indeed canceled contracts where there was dissatisfaction in
10 that sense.

11 So, it was not thirty days, it was a year and a
12 half of conversations, warnings, work informing or regarding
13 a dissatisfaction that we had on the performance of DRC.

14 And, who did that? The technical work team of the
15 Department of Education together with DRC's technicians. So,
16 the variable is thirty days, it's really not contextualized
17 with the reality of what happens.

18 Q So, none of your lawyers who were advising you
19 prior to the cancellation, told you that before you canceled
20 the Contract, you had to tell DRC "You have thirty days to
21 fix the problems or else the Contract will be canceled", none
22 of them ever told you that?

23 A I don't recall.

1 Q And, not seeing any letter by you, giving DRC
2 thirty days to fix the problems prior to cancellation?

3 A My answer to that is that I did not give them
4 thirty days, I gave them a year.

5 Q My question is very specific. You are not aware of
6 any letter that you wrote stating to DRC "You have thirty
7 days to fix the problem"?

8 A I don't know.

9 Q In this letter, when you wrote this letter of
10 January 23, 2002, to Mr. McDonald, was there any particular
11 reason why you did not tell Mr. McDonald that you were on
12 that same date canceling DRC's Contracts?

13 A I don't know. I don't know if there was a
14 particular need to do that.

15 Q So, the letter that you wrote to Mr. McDonald on
16 January 23, 2002, is not correct, at least with respect to
17 DRC?

18 A I could not conclude that because that is your
19 appreciation, Counsel.

20 Q It says in the letter that the contractors had been
21 advised that they needed to provide those services and repair
22 those installations which were not adequately made or else
23 face legal actions.

1 A I sustain in that argument.

2 Q Who told DRC that?

3 A We worked for a year with DRC to get them to their
4 job.

5 Q Who told DRC "Do your job or repair what you have
6 done wrong, or else face legal action"?

7 A We, the technical division of the Department of
8 Education worked with DRC for a year, who specifically? I
9 can not tell you.

10 Q So, are you telling me that somebody from your
11 Department, specifically told DRC "If you don't correct the
12 problems, we are going to sue you."?

13 A I don't know the language used there, I was not
14 there.

15 Q Regardless of the language used, are you telling me
16 that that message was given to DRC?

17 A I can assure you there was a message to DRC that
18 there were deficiencies that had to be corrected. The
19 specificity of the terms of the conversation, how threatening
20 the conversation was, the message was, I can not tell you
21 because I was not involved in the conversation.

22 Q What knowledge did you have---

23 MR. A.J. BENNAZAR: I propose instead "threatening"

1 "intimidating" because I think there is a language question
2 there.

3 BY MR. CAMILO SALAS:

4 Q So, what information did you have when you wrote
5 this letter to Mr. McDonald telling him that the contractors
6 had been told "Either, fix the problems or face legal
7 action."?

8 A The evaluation of the technical and legal team that
9 worked with DRC for a year, that determined that that action
10 be taken, and that was the action taken.

11 Q So, are you saying that you know that somebody in
12 the team told the contractors to fix the problems or else
13 face legal action?

14 A I haven't said that and you know it.

15 Q That's what I'm saying. So, what did you base this
16 statement on, that you---

17 A I already answered you.

18 Q ---that you are making these---

19 A I already answered you, I already answered that.

20 Q Do you mind explaining to me? I really didn't
21 understand it.

22 A I was very clear, Counsel. I already said that for
23 one year our legal and our technical advisors worked with

1 them and they were informed of the existing deficiencies.

2 They were advised or warned that if they did not
3 fix the deficiencies, they were going to be sued or a suit
4 was going to be filed. I don't know, and I reiterate that I
5 was not there.

6 Q So, why are you making that statement if you don't
7 know that, that's---

8 A Because the truth is that there really was a year
9 of work. We can go around this 40 times and I sustain my
10 position. It is very clear, there was a whole year of work.

11 Q We talked a little bit about this yesterday, but
12 let me clarify something. In your letter dated January 30,
13 2003 to Jane Mago, Legal Counsel of Telecommunications
14 Commission, on page 5, last paragraph, in the middle of that
15 paragraph, you indicate there that the Fiscal General Pedro
16 Gerónimo Goyco Amador who has initiated an investigation at
17 the request of the PR DOE on the services provided by the
18 former vendor whose contract was canceled, right?

19 A Yes.

20 Q And that contractor whose contract was canceled
21 refers to DRC?

22 A It could be.

23 Q But this clarifies that it was the Department of

1 Education who requested an investigation by Pedro Gerónimo
2 Goyco?

3 A No, no, no. It's Jane Mago and the Comptroller who
4 go into all the contracts of the Department of Education,
5 emphasizing in USAC's concern regarding the disbursement of
6 money to Puerto Rico, meaning DRC.

7 And the requirements of Jane Mago, not only the
8 Comptroller, but Justice as well as the Legislature, they
9 begin a study, an investigation of all the contracts where
10 they believed that there was some kind of situation of
11 interest to them. This happens one year after the
12 cancellation of the contract with DRC.

13 That is why I emphasize and I state that the
14 validity of a decision to cancel the Contract was based on
15 all the documents that were here and based also on the
16 technical reports.

17 All considerations taken a year after that decision
18 is another statement in fact, obviously.

19 Q Let me ask you this. We went through this
20 yesterday, but obviously we did not understand each other.
21 Did the Department of Education not request Pedro Goyco to
22 investigate DRC?

23 A At what time?

1 Q That would be my next question. Your Department
2 asked Pedro Goyco to investigate the DRC contracts, yes or
3 no?

4 A There is a petition from USAC, from Jane Mago that
5 an investigation be made of all contracts related to E-Rate.
6 And the best of my recollection is that whatever action is
7 taken be referred to Justice.

8 And in that sense, we agreed to USAC's request, and
9 evidence of that is the letter of October 3rd, 2002 to
10 District Attorney Pedro Gerónimo Goyco.

11 MR. A.J. BENNAZAR: Just for the sake of the record,
12 Jane Mago is the General Counsel, at the time, of the Federal
13 Communications Commission, who has personally overseen the
14 communication in the Department of Education, the FCC.
15 Reference has been made to Jane Mago, so you should put in
16 context who she was, and why she was making the request.

17 MR. CAMILO SALAS: Alright, and you clarified that.
18 BY MR. CAMILO SALAS:

19 Q Are you saying that the Department of Education
20 asked Pedro Goyco to investigate the DRC contracts only in
21 response to a request made by Ms. Mago?

22 A That's my response, Counsel.

23 Q And when did Ms. Mago make that request?

1 A We took a trip to Washington, I don't have clear
2 when the date was. And during that trip there are some
3 requirements. I'm clarifying here that the date of the trip
4 or the date of communications with Ms. Mago was October 1st,
5 2002.

6 MR. A.J. BENNAZAR: Brother Counsel may wish to
7 refer to page 3 of Tab 1.

8 MR. CAMILO SALAS: Alright.

9 BY MR. CAMILO SALAS:

10 A (DEPONENT) And, Counsel, explicitly, the concern of
11 FCC is that there be evidence of the handling of funds,
12 assessment of those funds, and performance of those funds.
13 And in that sense, we are asked, of course, to evidence
14 everything we know about the utilization of those funds. And
15 there was a requirement or request for information of what
16 the local judicial was doing in regards to the utilization of
17 those funds.

18 Q You are referring to page 3 of a letter to Jane
19 Mago?

20 A That's right.

21 Q Dated January 30th, 2003, true?

22 A That's right.

23 Q Now, first of all, you said that the meeting that

1 took place was dated October 1, 2002?

2 A As I recall.

3 Q During that meeting the FCC people asked you to
4 tell them what the local authorities were doing about it or
5 did they ask you to refer the matter to the local authorities
6 for investigation?

7 A I don't remember the specifics, but I can tell you
8 that there was insistence of the Federal Government so legal
9 action be taken, and that we had a government responsibility
10 to clarify that disbursement of money.

11 Q Why then, you had already on February 23, 2002,
12 already sent to the Fiscal's office, documents about DRC?

13 A What document are you talking about, Counsel?

14 Q Your letter dated October 3, 2002 to Pedro Goyco,
15 you are saying "El día 25 de febrero del 2002 le sometimos, a
16 petición de la Oficina del Fiscal Especial Independiente,
17 facturas a favor de la Compañía DRC."

18 A Evidence by request that could have come from the
19 Prosecutor's office of Fiscalía.

20 MR. A.J. BENNAZAR: Excuse me, for the sake of
21 clarity of the record, the Fiscal General and Fiscal Especial
22 Independiente are two separate and distinct government
23 agencies of the Commonwealth of Puerto Rico, just for the

1 clarity of the record. One is not run by the other.

2 Just to set the record clear, "el Fiscal General de
3 Puerto Rico" is the Prosecutor General for the Commonwealth
4 of Puerto Rico.

5 There is an independent body for "La Oficina del
6 Fiscal Especial Independiente" the Special Independent
7 Prosecutor which is run by a panel of former judges who hire
8 attorneys in private practice who act as prosecutors when
9 they investigate public services.

10 They are two completely different and separate
11 agencies, in two completely different buildings which respond
12 to different structures, to set the record straight. "La
13 Fiscalía" would be the Prosecutors Office.

14 DEPONENT: Let's go off the record for a moment.

15 (OFF THE RECORD)

16 After the recess,

17 BY MR. CAMILO SALAS:

18 A (DEPONENT) "Yo quiero aclarar que desde enero del
19 2001 hasta hoy, yo tengo unas peticiones de todo tipo, de
20 todas las comisiones, Fiscales Especiales Independientes,
21 Fiscal General, Secretaria de Justicia, Contralor, Blue
22 Ribbon Committee, Presidente de la Comisión de Educación y
23 Cultura de la Cámara de Representantes, el Senado, Cirilo

1 Tirado en su Comisión, que tiene que trabajar con
2 tecnología".

3 "O sea, yo tengo una suerte de peticiones de todo
4 tipo. Y evidentemente en la responsabilidad ministerial, en
5 la medida que existe una documentación que responsablemente
6 nosotros tenemos que referir, se hace".

7 "Y esto es un proceso que se da a través de
8 Auditoría Interna, se da a través de la Secretaría Social
9 Ejecutiva".

10 "Así que, situaciones medulares, bueno, Jane Mago."

11 "Vamos a hacer un receso un minuto, por favor, si me lo
12 permite."

13 (OFF THE RECORD)

14 After the recess,

15 BY MR. CAMILO SALAS:

16 A (DEPONENT) "Lo que estaba haciendo era un recuento
17 de que existe una gama de peticiones como parte de un proceso
18 investigativo y salvo a condiciones muy particulares, Jane
19 Mago es una". "Estamos hablando de un Director de FCC sobre
20 unas peticiones particulares."

21 "El recuerdo mío es muy vago porque esto es algo
22 que se procesa desde Auditoría, decía yo, desde la División
23 Legal, con la Secretaria Associate Ejecutiva". "Ella es

1 parte de las peticiones que legalmente, obviamente, o
2 ministerialmente puede hacer cualquiera de los puestos que
3 tienen jurisprudencia sobre el Departamento".

4 "Esto fue para ilustrar porque hay, ha habido, hay
5 y evidentemente como le dije en el día de ayer, vamos a
6 seguir trabajando sobre contratos de suplidores". "¿Por
7 qué?" "Porque esta agencia fue la agencia de mayor
8 notoriedad en términos de una cosa que otra y que
9 literalmente fuimos la primera agencia en no solo tomar
10 acción donde estimamos que había que tomar acción luego de
11 constatar la veracidad de las insuficiencias o de las
12 irregularidades".

13 "Estamos hablando de cosas distintas con la serie
14 de contratistas que ya es conocido públicamente de este
15 Departamento, que le faltaron al Departamento".

16 Q What I'm interested in knowing is with respect to
17 DRC, I don't care about the other contractors.

18 A Okay, that's the point in reference here.

19 Q I just want to know with respect to DRC, what was
20 the first time that your department made any request to
21 anybody to investigate DRC? And I suspect that you have
22 something in writing, some files, something that would show
23 that.

1 A It could be written petitions, it could be
2 telephone petitions, it could be during meetings.

3 Q So, if there was a verbal request made from you to
4 a prosecutor, then there is no paper trail after that?

5 A Would it exist, there should be a communication of
6 referral when the documents are referred or there could be
7 the visit of a representative of information, of a commission
8 who has visited to examine the documents as it has happened.

9 And there is probably no paper trail there as it
10 has also happened, there was none. Or a summons for visits
11 to the Commission in order to review whatever documents we
12 had.

13 Again, due to the large amount of agencies that are
14 involved in an investigative process, there is not just one
15 protocol, there is not just one form, there can be many
16 interventions.

17 Q So, who's got the documents?

18 A We are talking of DRC. As far as my information
19 and my personal knowledge, all the documentation existing
20 except the Executive Orders which, if they exist, they will
21 be provided. Everything else has been provided and it's on
22 the record.

23 Q I thought we had something else that... Yesterday

1 I showed this part of the document, and are you saying today
2 that those are all the documents that the Department of
3 Education has pertaining to DRC?

4 A To the best of my understanding---

5 MR. A.J. BENNAZAR: Again, for the record, brother
6 Counsel has chosen a very particular way of requesting
7 documents.

8 Brother Counsel has served about 12 subpoenas on
9 individuals. These subpoenas come attached with a piece of
10 paper demanding certain documents that are, generally are
11 vaguely described. With respect to each subpoena, at the
12 appearance of the person at the deposition, and sometimes
13 prior to that, we have been submitting those documents that
14 to the best of our ability conformed to the list requested,
15 to the extent that, for example, this morning we took
16 Linnette Molina Carde to brother Counsel's office and he had
17 requested documents having to do with the Comptroller's of
18 Puerto Rico investigation. And she brought the Comptroller's
19 report and her file in her office of every document
20 concerning the control report. And that we have been doing.

21 Of course, we can not say that this is any and all
22 documents which mentions DRC, obviously we are not saying
23 that. We are saying that everything that has been requested

1 of us through the particular method chosen by Counsel of
2 attachments to individual subpoenas to persons who are not
3 part to the case, but witnesses, with the exception of the
4 Secretary, we have been providing the documents, and shall
5 continue to provide them and have no objection to providing
6 anything and everything that we find that comports to those
7 descriptions.

8 BY MR. CAMILO SALAS:

9 Q Do you happen to have the subpoena that was served
10 on you, sir?

11 A I don't know if I have it here. I have the Notice
12 of Deposition, sir.

13 Q May I see that? It's got a list attached of
14 documents that we have requested. Now, can I borrow that so
15 we can...

16 A Sure.

17 Q Thank you.

18 MR. A.J. BENNAZAR: You are aware that you are
19 suing Mr. Rey in his personal capacity, that the case has
20 been dismissed with respect to the Department of Education.

21 MR. CAMILO SALAS: It has nothing to do with him
22 producing the documents that he as Head of the Department has
23 under his control.